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**DISCUSSION DOCUMENT**  
**PROPOSED CAPACITY ALLOCATION PROCESS**  
**REGULATIONS and OTHER MODIFICATIONS TO**  
**310 CMR 16.00**

**December, 1996**

**I. INTRODUCTION**

The Department of Environmental Protection is proposing a new set of regulations to govern the Capacity Allocation Process (CAP), first proposed in the 1994 Solid Waste Master Plan Update (MPU) as the "RFP" approach and subsequently expanded upon in the 1995 MPU. These regulations will govern the application and review of proposals for disposal capacity such that the Department can comparatively review proposals and select those proposal(s) which provide sufficient disposal capacity while minimizing human and environmental impacts.

All interested parties are encouraged to submit either written or oral comments during the public comment period which ends on **February 7, 1997**. During this comment period DEP will hold public hearings in several locations as described in the enclosed notification. Specific issues or questions on which DEP seeks comment are presented in bold in this document.

To submit written comments or obtain further information, please contact:

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## II. ORGANIZATION OF PUBLIC HEARING PACKAGE

The enclosed regulatory review package contains the following documents:

1. Proposed modifications to the Site Assignment Regulations, 310 CMR 16.00, including the proposed Capacity Allocation Process Regulations, 310 CMR 16.11 - 16.24, which establish application procedures, timelines, public comment procedures, and review criteria for allocating future disposal capacity.
2. Discussion document which provides the regulatory, statutory and policy decisions for the changes proposed for the site assignment regulations.

The proposed modifications to these existing regulations are indicated in the document by showing text to be added with double-underline and showing ~~text to be deleted with a line through it~~. Included with each modification is a discussion of the purpose for the modification.

## III. SUMMARY OF THE CAPACITY ALLOCATION PROCESS (CAP) REGULATIONS

### 1. Introduction

The current landfill permitting process constitutes a regulatory "horse race". Up to the announcement of the moratorium last December, projects had been reviewed individually as they were submitted to the Department. The first project to obtain a permit has been assigned disposal capacity, even where another project submitted earlier or later might have less human and/or environmental impact. DEP could not comparatively review several proposals to select the one with the least impact.

Given the goal of reducing reliance on landfills and increasing waste diversion through recycling and composting, it is proposed that the Department undertake a comparative review procedure whereby DEP will permit only sufficient disposal capacity to meet the state's needs while considering which facility will have the least human health and environmental impacts and contribute the most to improving the Integrated Solid Waste Management system (eg. the mix of recycling and composting operations, solid waste combustion facilities and landfills).

### 2. Development of the Regulations

The proposed regulations were developed with input from other EOE agencies and a review of other models for comparative evaluation of facilities which compare potential human health and environmental impacts. Two meetings were held with a focus group of interested parties to obtain early input on the conceptual issues. This group consisted of municipal officials and consultants who are members of the Solid Waste Association of North America (SWANA), representatives of pending solid waste disposal projects, and others.

## **IV. MAIN DISCUSSION POINTS**

### **A. Background**

The 1995 Solid Waste Master Plan Update (MPU) projected that there was no short-term need for solid waste disposal capacity for non-MSW through at least 1997 and for MSW through at least 2000. It also identified numerous projects currently in the pipeline for a site assignment (from the local board of health) and/or a permit that were proposing to add nearly two million tons of disposal capacity annually to the state's disposal system.

Due to the following factors: the short-term lack of need for landfill capacity; the excessive amount of disposal capacity proposed; and the Department's interest in maximizing expansion of the recycling economy and its economic benefits, the 1995 MPU announced three major steps that DEP would undertake:

1. a moratorium on the permitting of new solid waste disposal capacity;
2. a proposal to develop a new set of regulations that would allow DEP to comparatively review competing landfill projects and select the project(s) which best meet the needs of the state to provide sufficient disposal capacity, promote integrated solid waste management and minimize impacts on public health and the environment; and
3. a reduction in the threshold requiring a disposal project proponent to demonstrate there would be a need for the project's proposed capacity (needs analysis). Currently the needs analysis is triggered by the Secretary of the Executive Office of Environmental Affairs demonstration that an Environmental Impact Report (EIR) is required. The proposed rule would require that all disposal facilities are subject to needs analysis with some minor exceptions for purposes of closing a landfill or implementation of an innovative technology.

These proposed Capacity Allocation Process (CAP) regulations are intended to govern the allocation process including the submittal of applications, DEP review process, establishment of environmental and other criteria through which projects will be compared, CAP timelines, and opportunities for public comment on selection of CAP projects.

### **B. Overview of the Capacity Allocation Process and Timelines**

- DEP publishes and sends notices of commencement of application process. Notice includes:
  - Due date for filing applications (probably 60 days)
  - Dates for pre-application information meeting to assist potential applicants and answer inquiries from the public
- DEP convenes pre-application information meeting.
- Applicant files application with DEP and Board of Health
- 30 day public comment period commences as well as 40 day period for applicant to make minor modifications to complete the application.
- 30 day public comment period closes

- 40 day proposal modification period closes
- Tier I eligibility report issued by Project Evaluation Committee on 45th day after application date unless Committee extends report date up to an additional 30 days.
  - Committee may give applicant conditional eligibility status and set timeline to fix deficient applications.
- 45 day Tier II review period commences.
- Tier II report with allocation recommendations by the Project Evaluation Committee issued on 45th day unless the Committee extends report date up to an additional 30 days. 21 day public comment period commences.
- 21 day public comment period on Tier II report closes.
- Commissioner issues allocation decision within 30 days of the close of the public comment period.
- Notice to Proceed to selected applicants

The Department seeks comment on whether the time periods and points within the process for public comment are adequate and appropriate considering the need for efficiency and the availability of forums for public comment already in the site assignment and permit proceedings.

### **C. Specific Issues**

#### **1. Applicability of the Capacity Allocation Process**

The Capacity Allocation Process (CAP) will apply to all new or expanding solid waste landfills and combustion facilities, regardless of the size of the facility, with the following exceptions:

- vertical expansions or increases in the rate of disposal of non-MSW where the facility has signed a consent order for closure and the increase in rate or expansion will result in closure of the facility within a specified time period, or will finance the closure of the facility;
- a demonstration project or innovative technology project, at the discretion of DEP;
- a new landfill or expansion which is necessary to protect public health, safety or the environment as determined by DEP;
- where the landfill is necessary to avoid severe local hardship.

The draft regulations also provide the opportunity to apply for a waiver from the CAP process for certain landfills that are proposed to handle a total of 50 TPD or less if they can meet certain stringent criteria for meeting a local need, meeting at least a minimum recycling rate in the community, and meeting all the waste control provisions established at 310 CMR 19.017 of the Solid Waste Management Facility Regulations. This waiver would be subject to approval by the Commissioner and will be added to the existing waiver section at 310 CMR 16.18, (16.39 in the proposed regulations).

## 2. Eligible projects

The draft proposes that the Capacity Allocation Process (CAP) be open to all proposals, including new projects (which would need to proceed through MEPA, site assignment and permitting stages after being selected) and projects which have already entered the permitting process, including those projects identified in the 1995 Master Plan Update. An alternative approach would limit eligibility to sites that have either completed MEPA or received a site assignment.

## 3. Relation of CAP to MEPA

The draft regulations do not exempt CAP projects from the requirements of the Massachusetts Environmental Policy Act (MEPA), nor is it proposed that CAP will substitute for the MEPA review. The draft regulations instead require that CAP applications be submitted to MEPA at the same time they are submitted to the Department. While most existing proposals already have gone through or are now in the MEPA process, new applicants will be required by the regulations to file an Environmental Notification Form (ENF) which would begin the MEPA process at the same time they file the CAP application. MEPA may be able to review the CAP application, in addition to the ENF, when scoping an Environmental Impact Report (EIR) to determine the issues or level of additional detail that may be required to be addressed in an EIR, possibly eliminating duplication of effort. As the regulations are proposed, it will be the applicant's decision whether to proceed through the MEPA process in parallel with the CAP process or wait until the CAP process has been completed.

## 4. Two Tier Approach

The 1995 Master Plan Update proposed a two-tier review approach for the CAP whereby projects would first be categorized based on a hierarchy of land use criteria and then projects within each hierarchy category would be comparatively reviewed based on other environmental criteria. While the proposed regulations maintain a two-tiered review concept, it is proposed that projects not be categorized on the basis of land-use criteria alone in TIER I, but rather they be screened for a number of criteria and eligible projects then proceed to TIER II review. The two options considered during development of the regulations are discussed below.

### a. TIER I Function

The function of the Tier I review is to determine if a project is eligible for further, more detailed, consideration under Tier II.

OPTION ONE. One option considered by DEP in development of the regulations was to pre-categorize projects into preference categories based on the land use hierarchy presented in the 1995 Master Plan Update and identified as the “hierarchy alternative”. This hierarchy gives preference to existing facilities over greenfield (new) facilities with the goal of minimizing impacts to land not previously used for landfills. The hierarchy categories presented in the 1995 Master Plan included:

1. Category A: Vertical expansions or increases in capacity;
2. Category B: Lateral expansions or new landfills in previously site assigned areas; and
3. Category C: Lateral expansions or new landfills into areas not yet site assigned.

The hierarchy alternative also included review of projects to determine whether they should be elevated to a higher category based upon whether the project had "exceptional merit". The criteria on which would have elevated projects under this option included:

1. whether the facility would contribute to addressing a unique local or regional waste management need; and
2. the extent to which the project promoted or contributed to achieving the state's integrated solid waste management (ISWM) goals.

The hierarchy alternative gave more weight to land use impacts than other criteria. The presumption was that facilities falling into Category A would rank higher than facilities in Category B or C, unless those lower ranked projects were elevated due to having "exceptional merit". The hierarchy alternative was not included in the draft regulations because it is the opinion of the Department that while land use criteria are important, other criteria are equally as important for determining the suitability of a project and that these other criteria should be included in the TIER I review as well.

OPTION TWO. The proposed regulations present a second option which does not categorize projects based solely upon land use criteria and instead considers land use impacts with the other criteria during the TIER II review. This non-hierarchy approach treats land use impacts as one of many criteria to address, rather than the most important determinative factor.

The draft regulations present and the Department recommends OPTION TWO, where TIER I serves to screen CAP projects generally to determine their eligibility for further consideration using several of the site suitability criteria already contained in 310 CMR 16.00.

#### b. TIER I Criteria

The proposed TIER I criteria include the setbacks or distances from sensitive receptors now contained in the Site Assignment Regulations at 310 CMR 16.40 (16.60 in these proposed revisions). These setbacks serve as useful eligibility criteria because under the site assignment regulations, a facility which cannot meet the setbacks cannot obtain a site assignment.

#### c. TIER I Report

The draft proposes that the project evaluation committee (PEC) develop a report of the findings of the TIER I review, to be issued 45 days after the date applications are due, unless the PEC extends that review period by up to 30 additional days. The report will categorize applications as: eligible to proceed to TIER II; ineligible to proceed; or conditionally ineligible to proceed whereby a proponent has the opportunity to submit further information within 10 days to complete their application.

The draft also proposes that the PEC include a description of any scaling or weighting system it proposes to use in the TIER I report, which will allow the public to review the methodology before the TIER II report is issued.

#### d. TIER II Function

The function of the TIER II review is to comparatively review all eligible projects identified in the TIER I report and to recommend to the Commissioner which project(s) should be allocated disposal capacity. The recommendation will be based on an evaluation of the criteria described in e., TIER II Scoring, below. Criteria categories include the potential human health and environmental impacts of each facility as well as additional factors, including land use, historical impacts, compliance history, impact on transportation, project feasibility, and contribution to addressing unique local or regional solid waste issues. The basis for this review is to choose the project(s) which will have the least human health and environmental impact and greatest benefit in addressing the solid waste disposal needs of Massachusetts.

#### e. TIER II Scoring

The evaluation of proposed facilities will consider both quantitative and qualitative criteria. The Department considered several options for structuring the TIER II criteria for purposes of evaluating applications. The key difference among the options is the level of detail to place in the regulations for the quantitative analysis. Options considered include:

- Option (a) - presumption that the greater the distance from the site to a sensitive receptor the less the impact on the receptor, so a facility farther away from a receptor would score higher;
- Option (b) - inclusion of a factor for each criteria specifying how much that criteria counts toward the project's total score, e.g Impact on Human Receptors = 40% of total factor points.
- Option (c) - inclusion of specific distances to be measured, eg. surface water supplies within 500 feet, 1000 feet, and 2500 so a facility is scored by how it falls within these distances;
- Option (d) - awarding of specific points for each factor according to the distances specified for each factor, eg. surface water supplies within 500 ft = 5 pts, 1000 feet = 7 pts., 2500 feet = 9 pts, so a facility receives a specific numerical score based on the points;

The proposed regulations utilize a combination of options (a) and (b). The proposal maintains the maximum amount of flexibility for the PEC in scoring the criteria, but provides a relative weighting of each category of criteria to establish the relative importance of each category in the final evaluation. Thus Impacts to Human Receptors would be worth 40% of a proponent's final quantitative grade and would be considered highly significant in the qualitative review, while Impacts to Ecological Receptors would be worth 20% in the quantitative review and highly significant in the qualitative review, and so on. The Department concluded that it was unnecessary and overly restrictive to incorporate into the regulations the precise details exemplified in options (c) and (d). In addition, options (c) and (d) presume that certain criteria are more important than other criteria since each would be weighted with a numerical value, which may not be the case where every site will be different and the potential impacts of a facility may be different. On the other hand, by providing a general weighting to each category of criteria, the regulations provide proponents with guidance as to which criteria will be more important in the final decision to allocate capacity.

DEP will consult with the advisory group to develop additional guidance for the Department and the PEC to apply during the evaluation process. The Department specifically seeks comment on the relative weighting of the categories of criteria.

## f. TIER II Criteria

The general categories of TIER II criteria, located in the proposed regulations at 310 CMR 16.18, include:

1. Relative impacts to human receptors;
2. Relative impacts to ecological receptors;
3. Land use impacts;
4. Historical and archeological impacts;
5. Compliance history;
6. Impact on transportation;
7. Mitigation measures;
8. Contribution to improving statewide or local integrated solid waste management system;
9. Contribution to addressing a unique or exceptional local or regional solid waste issue;
10. Project feasibility;
11. Contribution to economic development.

For each category of criteria there is a measure of the quantitative significance and a measure of the qualitative significance of the category, as well as the measurement standard to be employed by the PEC.

The Department seeks comment on:

- the appropriateness of the categories of criteria and whether any should be added, deleted or modified
- the appropriateness of the quantitative and qualitative significance for each category;
- the appropriateness of the measurement standard specified;
- the appropriateness of the specific factors included in each category of criteria and whether any factors should be added, deleted or modified.

## 5. Public Participation

The draft regulations propose public comment periods at two points in the evaluation process:

1) after CAP applications have been submitted to allow comment on the merits or deficiencies of proposed projects; and 2) on the recommendations of the TIER II report. The public may also attend the pre-application information meeting which is intended to answer questions regarding submittal of applications and to clarify review procedures and standards.

Furthermore, the draft regulations require public notice to be issued upon release of the TIER I report. All notices are to be published in non-English speaking papers if certain minimum population requirements are present in a community where a project is located.

One alternative considered was to require a public comment period for a draft TIER I report before establishing a final TIER I report. While this would allow comment on the TIER I report, it would delay commencement of Tier II review. In addition, the TIER I review process proposed in the regulations will rely primarily on the setback distances to certain receptors (ie. water supplies, schools, wetlands) established in the site assignment portion of these regulations which are relatively straight-forward criteria to apply to a project. In general, a project either meets the setback or it doesn't, whereas in the TIER II review there will be both

quantitative and qualitative evaluations of each criteria for which public comment is more useful.

## 6. Project Evaluation Committee

The draft regulations propose that a Project Evaluation Committee (PEC) issue the TIER I report and the TIER II report. As proposed, the PEC would consist of the Commissioners of the Executive Office of Environmental Affairs (EOEA) agencies plus other persons that may be designated by the Secretary of EOEA. The PEC has been proposed to undertake responsibility for the review because any project that is allocated capacity will then need to obtain a site assignment if it does not already have one, and a permit. DEP already has responsibility for issuing both a site suitability report and a permit. Furthermore, the TIER II criteria address issues that fall under the jurisdiction of other EOEA agencies such that it is reasonable to have these other agencies assist in the review of applications.

## 7. TIER II Report

The PEC will issue the TIER II report within 45 days of issuing the TIER I report, unless the PEC determines that more time is necessary for their review, in which case the PEC will have up to 30 additional days to issue the report.

The TIER II report will recommend to the Commissioner which project(s) should be allocated disposal capacity. The report may also indicate alternative projects to which to allocate capacity in the event that the selected project(s) are not constructed. As indicated above, the TIER II report will be available for public comment. The comment period will close 21 days after the public notice for the Tier II report is issued. The public comment period is intended to allow the public to comment on the PEC's evaluation and final recommendations. The PEC may choose to revise the report based upon public comment. The public comment period can be extended if necessary or re-opened should the PEC issue a revised report in response to public comment.

## 8. Tonnage Allocation.

The draft regulations recommend that the Commissioner of DEP allocate tonnage based on the list of top-ranked projects provided by the PEC. This limits the responsibility of the PEC to tasks more likely within its expertise and would allow the PEC to choose projects independent of the relationship between proposed project capacity to projected regional or statewide need. DEP would then make the final allocation of tonnage based on its best estimate of need for capacity.

## 9. Notification to Proceed.

Once the Commissioner issues an allocation decision, DEP will issue a notification to proceed to the selected project so that that project can continue with the permitting process. The notification to proceed will require the proponent to develop a binding agreement with DEP establishing milestones for permitting and construction of the project to ensure that it is constructed in sufficient time to provide the needed capacity and will require the proponent to obtain financial assurance to demonstrate financial capability.

## 10. Reallocation of Capacity.

The regulations provide a means for reallocating capacity to another project(s) should the selected project be unable to meet the timelines for permitting and construction. The regulations would require DEP to provide notice to the project originally allocated capacity prior to re-allocating the capacity to allow that facility to demonstrate whether it could proceed or not.

## V. SUMMARY OF MAJOR CAP ISSUES FOR PUBLIC COMMENT

The Department specifically seeks comment regarding the following issues:

- Are there sufficient opportunities for public comment.
- Are the time periods for public comment adequate and appropriate.
- Are the Tier I criteria appropriate. Should other criteria be added.
- Is the relative weighting of the TIER II criteria categories appropriate.
- Should other categories of criteria be included or should any be removed.
- The appropriateness of the quantitative and qualitative significance for each category.
- The appropriateness of the measurement standard specified.
- The appropriateness of the specific factors in each category of criteria and whether any factors should be added or deleted.
- Are other definitions necessary.

## VI. OTHER MODIFICATIONS TO THE REGULATIONS

Other modifications to the Site Assignment Regulations are being proposed either to address corrections to the regulations or to ensure that the regulations are consistent with other DEP programs. These proposed modifications are discussed below.

- a. Water Supply Definitions and Modifications to Related Site Suitability Criteria, 16.02, 16.60(3)(a)4.-8., 16.60(3)(c)1.-2. and 16.60(3)(d)1.-2.

Several definitions related to protection of water supplies are being proposed for modification to maintain consistency between the solid waste regulations and other Department regulations, including the Drinking Water Regulations, 310 CMR 22.00. Modifications to these definitions requires complementary modifications to several of the site suitability criteria addressing protection of water resources in the siting of solid waste management facilities. Where the definitions proposed for modification are currently included in the Drinking Water Regulations, 310 CMR 22.00, they will be incorporated in both the Site Assignment and Solid Waste Regulations by reference so that if the definitions in the Drinking Water Regulations are modified in the future the solid waste regulations will not also need to be modified. Where the definitions are not currently contained in the Drinking Water Regulations the complete definition will be included in the site assignment and solid waste regulations. To make it easier to use this discussion document, where these regulations will reference the definition contained

in Drinking Water Regulations the complete definition as it currently appears in those regulations is included here in brackets [ ] so that reviewers can see the definition without needing to refer to the Drinking Water Regulations. **[NOTE: Modifications discussed here for the Site Assignment Regulations will also be included in the Solid Waste Management Facility Regulations, 310 CMR 19.000 and the permitting criteria at 310 CMR 19.038, as applicable.]**

# 1. Zone A, Zone B and Zone C

The Division of Water Supply is adding definitions for Zone A, Zone B and Zone C to the Drinking Water Regulations, 310 CMR 22.00. It is proposed to add these definitions to 310 CMR 16.00 and 19.000 and to modify both the site suitability criteria in 310 CMR 16.00 and the permitting criteria in 310 CMR 19.000 to refer to Zone As, Bs and Cs in place of specific setbacks from surface drinking water supplies now included as site suitability criteria. This will result in consistent application of surface water supply protection criteria across DEP programs.

Zone A includes a 400 foot area from the bank of a Class A drinking water source and 200 foot area from a tributary to a Class A drinking water source. Zone B includes the area within one-half mile of the Class A drinking water source. Zone C includes the remaining area within the watershed of the Class A drinking water source that is not included in the Zone A or Zone B.

Use of Zone A would replace setbacks of 500 feet currently in the site assignment regulations for solid waste handling facilities and solid waste combustion facilities. While this change would reduce the setback by 100 feet for these facilities from a surface drinking water supply, the Department is satisfied that this new setback is sufficient for these types of solid waste facilities because of the nature of these types of facilities. Unlike landfills, where solid waste is disposed in or on the ground and leachate is generated as rainwater percolates through the solid waste such that the leachate must be collected for treatment, handling facilities do not in general result in generation of leachate. Handling facilities generally handle solid waste either inside an enclosed building on a concrete floor, or in some other manner which either does not produce leachate or with sufficient controls (eg. on a concrete pad or other low permeability pad) that leachate generation is minimized and what is generated can be collected. Large transfer stations are enclosed facilities and small transfer stations often utilize a self-contained solid waste compaction unit similar to those located at large retail establishments such as super markets, thereby minimizing the generation of leachate.

Use of Zone B as the setback for expansions of existing landfills from surface drinking water supplies, being one-half mile, results in no change to the siting of expansion areas for existing landfills since the Zone B distance is identical to the setback currently established in the site assignment and solid waste regulations. On the other hand, it is proposed to **increase** protection to surface drinking water supplies by increasing the setback of a landfill from a river or stream that drains to a surface drinking water supply, where the water supply is within 1 mile of the landfill. The setback is proposed to be increased from 250 feet to 400 feet.

The Department proposes to exclude new landfills entirely from the Zone C of surface drinking water supplies. The watershed of a surface water supply is by definition that area from which the surface water flows to the surface water supply. Groundwater flow generally follows

regional surface water flow. As groundwater eventually discharges to surface water, any contaminated landfill leachate or surface landfill runoff in the watershed may eventually enter the public surface water supply or its tributaries. Therefore, DEP is proposing to prohibit the siting of new landfills from surface drinking water supply watersheds.

## 2. Proposed Drinking Water Source Areas

The Department recently received significant comment on proposed modifications to the definition for “potential public water supply” proposed in the draft Compost Facility Regulations, 310 CMR 20.00, for which public hearings were held in March 1996. In general, comments received on this modification expressed concern that the Department was modifying the definition to reduce the protections afforded potential public drinking water areas.

It was not the Department’s intent to reduce protections for potential public drinking water supply areas through the modifications proposed in the compost facility regulations, but rather to clarify the definition and bring it into line with modifications being considered elsewhere in the Department.

C. 111, s.150A½, which was established in 1987, directed DEP to develop siting regulations, taking into consideration, among other criteria, “the location, nature and extent of any existing or potential sources of public or private drinking water supplies in relation to the site, including the recharge area of a sole source aquifer;”. When the Site Assignment Regulations and the Solid Waste Management Facility Regulations were promulgated in 1988 and 1990, respectively, there was no definition for a potential drinking water supply in use by DEP other than the one developed for those regulations. However, since initial publication of the solid waste regulations, the concept of what should constitute a proposed drinking water supply and what protections should be afforded them has evolved to the point where it is now necessary to incorporate those changes in the solid waste regulations.

These regulations propose to replace the current definition of a “potential public water supply” with the definition for “proposed drinking water source area”. This change ensures consistent application of the Drinking Water Regulations for siting and permitting solid waste facilities and clarifying which areas of the state may be considered proposed drinking water source areas.

When the siting regulations were first proposed there was concern that a broad definition might automatically rule out the siting of landfills over much of the state since so many areas could potentially be used for a water supply, or at least might require a lengthy review to determine if an area truly had potential to serve as a water supply. Solid waste facility proponents, on the other hand, sought clear standards in the regulations to allow them to assess whether a site was likely to meet the site suitability criteria prior to submitting an application so they would not waste time and resources in the site assignment process for sites which would later be found not to be suitable. To address these concerns, restrictions were included in the regulations requiring communities to take certain actions to designate areas for water supply purposes before an area would be considered a “potential public water supply” for purposes of the siting regulations. When the Site Assignment Regulations were drafted, the definition of a “potential public water supply” included three basic restrictions:

- the area had been determined to be capable of yielding water in sufficient quantity and quality;

- the water supply either already had received DEP approval as a water supply, or had applied to the Department for such a determination; and
- both of the above must have occurred at the earlier of filing either the site assignment application or the Environmental Notification Form (ENF) with MEPA.

When the Site Assignment Regulations were initially established no specific guidance was provided to further define the first two issues mentioned above. The first two issues have since been addressed through the promulgation of amendments to the Drinking Water Regulations by the Division of Water Supply which establish a “source approval process. This process requires the submittal of a specific application to DEP for designation of a public drinking water supply and specific criteria for DEP approval, as specified by the Drinking Water Regulations at 310 CMR 22.21(1). The source approval application therefore serves as the undefined “necessary documentation submitted...for determination...” which is currently included in the definition of a potential public water supply. Furthermore, one function of the source approval review by DEP of a potential source of drinking water is to determine if there is a sufficient supply to meet the municipality’s needs and to ensure that the water is of sufficient quality to be used as drinking water. The Drinking Water Regulations specify that no water supply shall be approved unless “the source of water supply ...will achieve all applicable water quality standards set forth in the Massachusetts Drinking Water Regulations, 310 CMR 22.00”. In summary, the purpose of the source approval process is to ensure that a proposed water supply is needed by the community, is of sufficient size to meet the stated needs of the community, and is of drinking water quality.

The proposed definition also includes the proposed IWPA or the preliminary Zone II for a proposed public water supply well which has received site exam approval by DEP and where the municipality is proceeding with source approval. Site exam approval is the first step of the source approval process. During the site exam process DEP looks at water quality, potential well locations, adjacent land use, zoning, possible sources of contamination, and potential well yield. Once a site receives site exam approval it is possible to define a proposed interim wellhead protection area or a preliminary Zone II, which then defines the proposed drinking water source area.

The requirement that proposed drinking water source areas be established before the facility application is filed has been moved from the definition into the criteria at 310 CMR 16.40(3)(a)4.

The criteria now also incorporate the provisions of MGL c.40A, s.9, as amended by the Solid Waste Act of 1987, allowing municipalities to prohibit siting or expansion of a facility within recharge areas of surface drinking water supplies and areas within the zone of contribution of existing or proposed public water supply wells.

Finally, the definition of an Interim Wellhead Protection Area (IWPA) has been modified to reference the definition now included in the Drinking Water Regulations, 310 CMR 22.00. This definition was developed after promulgation of the Site Assignment Regulations and the Solid Waste Management Facility Regulations. The Drinking Water Regulations definition specifies that the ½ mile radius applies to wells with approved pumping rates of 100,000 gallons per day or greater. For wells with lower approved pumping rates the IWPA is determined by a formula [IWPA radius in feet = [32 x pumping rate in gallons per minute] +

400]. This will result in an IWPA for smaller wells that will be less than a ½ mile radius. While DEP has relied on this method for determining an IWPA for smaller wells since included in the Drinking Water Regulations, this modification will bring the solid waste regulations clearly into line with current practice.

b. Grandfathering of Transfer Stations, 310 CMR 16.02 and 16.41(1).

The proposed regulations modify the definition of “Site Assignment” to provide for the grandfathering of transfer stations that were in existence prior to August 28, 1970 when “transfer station” was added to the definition of “facility” contained in c.111, s.150A . Further, it is proposed to amend 310 CMR 16.41(1) to include the grandfathering concept in the section on alternative use of site assigned area.

c. Temporary Storage by Public Works Departments - 16.05(5)(a)

The exemption currently provided for “Dumpsters and Roll-Offs” used by public works departments for waste they generate is proposed to be clarified. The intent of this exemption is that public works departments may temporarily store certain materials they generate or which they collect from highways without being regulated as solid waste facilities. In addition, DEP often has been asked what constitutes a “temporary storage container”. These modifications indicate that storage of certain materials on the ground in bunkers is acceptable. The modifications clarify that this exemption applies to local DPWs, MHD, the MDC and other similar government agencies.

d. Residential Disposal of Wood wastes - 16.05(5)(d)

The proposed modification clarifies that the exemption for the disposal of on-site generated woodwastes at a single family residence or a farm applies only to the occupant or resident of that residence or farm and not to a developer constructing a residence.

e. Public Notice for Non-English Speaking Populations - 16.32(4)(c) and 16.40(7)

Public notice requirements for the site assignment process are proposed to be expanded to require that public notices also be published in the primary language of residents of a community where there is a significant non-English speaking population in the community.

f. Areas of Critical Environmental Concern (ACEC) - 16.60(4)(d)

The criteria for ACECs currently bans any solid waste management facility from being sited within the boundaries of an ACEC and bans any facility located adjacent to an ACEC where that facility would fail to protect the outstanding resources of the ACEC. This outright ban is more restrictive than other regulatory programs under the Executive Office of Environmental Affairs, which generally require that the outstanding resources of the ACEC be protected, but do not ban siting of facilities from the ACEC itself. Therefore, the ACEC criterion is proposed to be modified to allow solid waste facilities other than landfills to potentially be sited within an ACEC. The modifications specify that: 1) landfills remain banned from ACECs; 2) other solid waste facilities can be sited within an ACEC if the outstanding resources are protected;

and 3) no facility may be sited adjacent to an ACEC if it threatens the outstanding resources of the ACEC.

g. Size of Facility - 16.60(4)(g)

The permitting criteria for combustion and handling facilities and for landfills at 310 CMR 19.038(2)(b)3.a. and 19.038(2)(c)5.a., respectively, have always contained a 100 foot setback from the waste handling area to the property line, which is intended to provide a minimum buffer from facility operations for abutters of the property. However, this same setback has not been included in the site assignment regulations and has caused confusion for operators where a site assignment may have been granted without consideration for this setback that would then be applied later in the permitting process. Therefore, to eliminate confusion, it is proposed to specifically include this 100 foot setback in the site assignment regulations in the general criteria addressing size of a facility. The setback does not apply where the waste management area borders a separate solid waste management facility.

h. Promotion of Integrated Solid Waste Management Criteria - 16.60(5)(a)

Because the new capacity allocation section of these regulations addresses the issues of whether a facility's capacity is needed, the extent to which it will be part of an integrated solid waste management system and the extent to which the facility will maximize diversion of recyclables, paragraph (a) of the Promotion of Integrated Solid Waste Management criterion is deleted.